

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC

SERVED: MAY 16, 2006

IN THE MATTER OF

JOAQUIN RODRIGUEZ

FAA DOCKET NO. CP05SO0049  
(Civil Penalty Action)

DMS NO. FAA-2005-22885 -5

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
MAY 16 2006 11:02

**ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE**

By "Agency's Motion to Deem Allegations Admitted" ("Motion") served February 8, 2006, Complainant asserted that Respondent had not filed an answer to the complaint,<sup>1</sup> and moved that we deem Respondent to have admitted the truth of the allegations in the complaint and limit the hearing, if necessary, to the issue of sanctions.<sup>2</sup> Respondent did not respond to the Motion.

By "Show Cause Order of Chief Administrative Law Judge" ("Show Cause Order") served March 22, 2006, we ordered Respondent to show cause, on or before April 21, 2006, why the allegations of the complaint should not be deemed admitted and an order assessing civil penalty should not be issued against him. We also ordered that, absent such a response by Respondent, a judgment would be entered against Respondent in the amount of \$7,300. For the reasons set forth below, we deny the Motion.

<sup>1</sup> See Motion ¶ 8.

<sup>2</sup> See Motion at 4. The Motion was mailed to Respondent at 525 Boxwood Dr., Yaphank, NY 11967. See Motion at 5 ("Motion Certificate of Service"). The Motion does not appear to have been sent to FAA's Hearing Docket and does not appear on DMS. Each party is ordered to ensure that all of its pleadings have been received by the FAA's Hearing Docket.

According to Complainant, it mailed the complaint to Respondent at two different addresses:

"In a letter dated October 14, 2005, sent in response to a Final Notice of Proposed Civil Penalty, Respondent requested a hearing in this matter. The return address on this letter was, 'Joaquin Rodriguez, 525 Boxwood Dr., Yaphank (sic) [sic], N.Y. 11967'. *Exhibit 1.*

\* \* \*

"On October 27, 2005, Complainant filed the complaint in this matter with the Hearing Docket and served a copy on Respondent. *Exhibit 2.* Complainant sent the complaint to 'Joaquin Rodriguez, 525 Boxwood Dr., N. Shirley, N.Y. 11967', Respondent's last known address and the same address to which the Final Notice was sent. North Shirley, N.Y. is another city on Long Island, New York in the same zip code. *Exhibit 3.*

\* \* \*

"The complaint was returned to Complainant marked 'moved, left no address, unable to forward, return to sender' on November 9, 2005. *Exhibit 4.* Since that time, Complainant has made several attempts to serve the complaint on Respondent.

\* \* \*

"Most recently, on November 25, 2005, via certified mail, Complainant sent the Respondent a copy of the complaint at 525 Boxwood Dr., **Yaphank**, NY 11967. After several attempts at delivery, the U.S. Post Office returned the complaint and marked it 'Unclaimed'. *Exhibit 5.*

\* \* \*

"Another copy of the complaint was sent to Respondent via regular 1<sup>st</sup> class U.S. Mail on December 27, 2005. *See, Exhibit 5.* This copy of the complaint has not been returned."<sup>3</sup>

By his "Response to Judge's Show Cause Order" ("Response") served April 20, 2006, Respondent contends that the "allegations in the complaint should not be deemed admitted nor should an order assessing civil penalty be issued[.]" because he "did not have knowledge and therefore no notice to respond [to] items included in the order to show cause[.]" including the complaint.<sup>4</sup> Respondent avers that he did not have "notice or other information from the court in

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<sup>3</sup> Motion ¶¶ 1-5 (emphasis in original).

<sup>4</sup> Response at 1, 2 (emphasis in original).

this matter except the mailing to which I responded with a request for a hearing and this order to show cause.”<sup>5</sup> Additionally, Respondent contends that:

“at no time did I personally mark, nor do I have knowledge of anyone else marking any correspondence as ‘moved, left no address, unable to forward, return to sender’ (order to show cause page 2 ¶ 5.)

“In this regard – it would be very important and of great significance in this matter to determine who, has redirected my mail and/or subverted its delivery. A copy of exhibit 4 may assist me in the verification/determination of this issue.

\* \* \*

“As Respondent[,] I continue to be available and able to respond to any and all paperwork in this matter. To ensure, I will be the sole person in control of all future correspondence in this matter. Respondent will make arrangements to secure a post office box at the Shirley, NY[] post office[] in my name only and communicate the same to all parties to this action.”<sup>6</sup>

The Rules of Practice require Respondent to file a response to the complaint—either an answer pursuant to 14 C.F.R. § 13.208(d) or a motion pursuant to 14 C.F.R. § 13.218(f)(1-4)—not later than 30 days after service of the complaint.<sup>7</sup> When service is by mail, 5 days are added to the prescribed period.<sup>8</sup> Accordingly, even if time for responding to the complaint was based on the latest date of service, i.e., December 27, 2005,<sup>9</sup> Respondent’s written answer or motion would have been due no later than Tuesday, January 31, 2006.

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<sup>5</sup> Response at 1.

<sup>6</sup> Response at 1-2.

<sup>7</sup> See 14 C.F.R. § 13.209(a) (“respondent shall file a written answer to the complaint, or may file a written motion pursuant to §13.208(d) or §13.218(f)(1-4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint”).

<sup>8</sup> See 14 C.F.R. § 13.211(e).

<sup>9</sup> Service by mail occurs on “the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.” 14 C.F.R. § 13.211(d). Service of a document “that was returned, that was not claimed, or that was refused” is valid if the document “was properly addressed [and] was sent in accordance with [the Rules of Practice],” and such service is “considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.” 14 C.F.R. § 13.211(g). A “properly addressed” document is “a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.” 14 C.F.R. § 13.202.

An untimely answer may only be excused for good cause.<sup>10</sup> When deciding whether good cause exists, we look to why the document was filed late.<sup>11</sup> Respondent states that he had no knowledge of the complaint referenced in the Show Cause Order; a contention supported by Exhibits 4 and 5 to the Motion, which indicate that the complaint was returned to Complainant marked “moved, left no address, unable to forward” and “unclaimed.” Respondent further states that “at no time did I personally mark, nor do I have knowledge of anyone else marking any correspondence as ‘moved, left no address, unable to forward, return to sender.’”<sup>12</sup> Complainant has filed nothing to rebut those statements.

The law does not favor default judgments, and we understand that the Rules are intended to ensure that a respondent will file a meaningful answer—not to set a default trap for the unwary.<sup>13</sup> Moreover, while Complainant need not show prejudice,<sup>14</sup> it has not claimed it was prejudiced by the delay. Accordingly, we conclude that Respondent has shown good cause for its failure to file an answer.

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<sup>10</sup> *Thomas M. Tribbett, Jr.*, FAA Docket No. CP05EA0002, DMS No. FAA-2005-20324, Show Cause Order of Chief Administrative Law Judge, at 4 (Dec. 2, 2005); *In re Larry's Flying Serv., Inc.*, FAA Docket No. CP97AL0002, FAA Order No. 98-4, Decision and Order, at 2 (Mar. 12, 1998) (Garvey, Adm'r); *Kinley Constr.*, FAA Docket No. CP03SO0003, DMS No. FAA-2003-14230, Show Cause Order of Chief Administrative Law Judge, at 2 (Oct. 1, 2003).

<sup>11</sup> *Thomas M. Tribbett, Jr.*, at 4; *In re Carl P. Langton*, FAA Docket No. CP92AL0417, FAA Order No. 93-12, Decision and Order, at 7 (Mar. 25, 1993) (Del Balzo, Act'g Adm'r); *In re Michael John Costello*, FAA Docket No. CP89WP0351, FAA Order No. 92-1, Order Granting Reconsideration and Partially Granting Appeal, at 5 (Jan. 9, 1992) (Harris, Act'g Adm'r); *Kinley Constr.*, FAA Docket No. CP03SO0003, at 2; *Ryan Int'l Airlines, Inc.*, FAA Docket No. CP99GL0011, DMS No. FAA-1999-5805, Order of Acting Chief Administrative Law Judge, at 2 (July 20, 1999), *aff'd*, FAA Order No. 2000-2, Decision and Order, at 5 (Feb. 3, 2000) (Garvey, Adm'r).

<sup>12</sup> Response at 1.

<sup>13</sup> *Thomas M. Tribbett, Jr.*, at 4; *In re Safety Equip. and Sign Co., Ltd.*, FAA Docket No. 90-226 (HM), FAA Order No. 92-76, Decision and Order, at 5 (Dec. 21, 1992) (Richards, Adm'r) (“Wherever possible, cases should be disposed of on the merits after a hearing, rather than summarily because of a procedural defect.”); *In re David Lloyd Cornwall*, FAA Docket No. CP90AL0295, FAA Order No. 92-47, Decision and Order, at 7 (July 22, 1992) (Richards, Adm'r) (same).

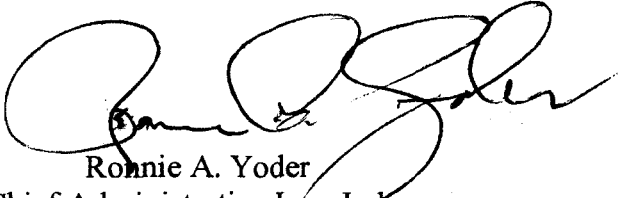
<sup>14</sup> *See Safety Equipment and Sign Co., Ltd.*, FAA Order No. 92-76 at 5 (December 21, 1992) (“Complainant has not claimed prejudice.”). *But see Larry's Flying Service, Inc.*, FAA Order No. 98-4 at 7 (March 12, 1998) (“the Rules of Practice do not . . . require Complainant to show prejudice”), *reconsideration denied*, FAA Order No. 98-14 (July 3, 1998).

In view of Respondent's contention that he has not received certain orders and pleadings in this proceeding, we will send Respondent a copy of the complaint, the February 1, 2006 Notice of Assignment of Proceeding, the February 1, 2006 Order of Chief Administrative Law Judge, and the Motion to the return address on the envelope accompanying his Response (525 Boxwood Drive, N. Shirley, NY 11967).

Accordingly, IT IS ORDERED THAT:

- (1) Complainant's Motion to Deem Allegations Admitted is denied;
- (2) Respondent, on or before June 20, 2006, shall serve, file, and deliver an answer to the complaint or a motion;
- (3) Respondent, on or before June 15, 2006, will provide the Judge and Complainant with an address and telephone number where Respondent can be reached;
- (4) The parties, on or before June 15, 2006, shall serve, file, and deliver a response to the Judge's February 1, 2006 Order.<sup>15</sup>

**SO ORDERED.**



Ronnie A. Yoder  
Chief Administrative Law Judge

Attachment – Service List

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<sup>15</sup> The Show Cause Order suspended the deadline for responding to the February 1, 2006 Order, pending resolution of the Show Cause Order. See Show Cause Order at n. 5.

**SERVICE LIST**

**ORIGINAL & ONE COPY**

Hearing Docket  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591  
Att: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building – Room 2014<sup>16</sup>

**ONE COPY**

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

Gerald A. Ellis, Attorney  
Office of the Regional Counsel  
Southern Region, ASO-7  
Federal Aviation Administration  
P.O. Box 20636  
Atlanta, GA 30320  
TEL: (404) 305-5200  
FAX: (404) 305-5223

The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
Room 5411  
US Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590  
TEL: (202) 366-2142  
FAX: (202) 366-7536

---

<sup>16</sup> Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, SW, Wilbur Wright Building – Room 2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.

**U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
FEDERAL AVIATION ADMINISTRATION**

DEPT. OF TRANSPORTATION  
DOCKETS

2005 MAY 16 A 11:02

**RECEIVED**

NCV - 1 2005

**HEARING DOCKET**

FEDERAL AVIATION ADMINISTRATION,  
Complainant,

vs.

Joaquin Rodriguez

Respondent.

FAA Docket No.  
Judge

JUDGE NOT YET ASSIGNED

**COMPLAINT**

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I.

On October 7, 2005, Respondent, Joaquin Rodriguez was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$7,300. On ~, the Agency Attorney received a written request for a hearing from the Respondent.

II.

1. On or about March 4, 2005, you were a passenger aboard Southwest Airlines Flight Number 147 ("Flight 147") from Islip, New York, to Orlando, Florida.
2. While Flight 147 was in flight, you threw an item at a flight attendant.
3. While Flight 147 was in flight, your behavior required you to be reseated by flight attendants.
4. While Flight 147 was in flight, you threatened to do bodily harm to a flight attendant, when the plane landed.

III.

1. By reason of the foregoing facts and circumstances, Respondent violated the following sections of the Federal Aviation Regulations and Federal Statutes:

a. Section 121.580 of the Federal Aviation Regulations, in that no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

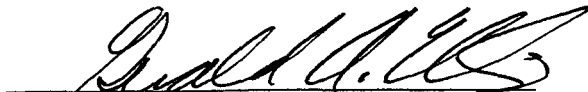
b. 49 U.S.C. Section 46318, which states that an individual who physically assaults or threatens to physically assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$25,000.

2. Pursuant to 49 U.S.C. Sections 46301(a)-(d), Respondent is subject to a civil penalty not to exceed \$1,100 for each of the FAR violations alleged.

3. Under the facts and circumstances of this case, a civil penalty of \$7,300 is appropriate.

WHEREFORE, the Agency, by counsel respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$7,300.

Respectfully submitted this 27<sup>th</sup> day of October, 2005.



GERALD A. ELLIS

Attorney

Office of the Regional Counsel

**PLEASE NOTE:**

Pursuant to Title 14 CFR Section 13.209(a), you are required to file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service which follows.



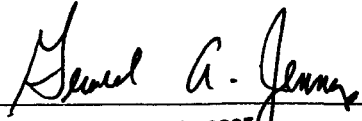
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Complaint has been mailed this date by Certified Mail, Return Receipt Requested, to the following:

Hearing Docket  
FAA, AGC-400, Room 2014  
600 Independence Avenue, SW  
Washington, DC 20591

(Original + 1 copy)

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

  
OCT 27 2005

Dated

DEPT. OF TRANSPORTATION  
DOCKETS

2006 MAY 16 A 11:02

**SERVED: FEBRUARY 1, 2006**

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC

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IN THE MATTER OF

JOAQUIN RODRIGUEZ

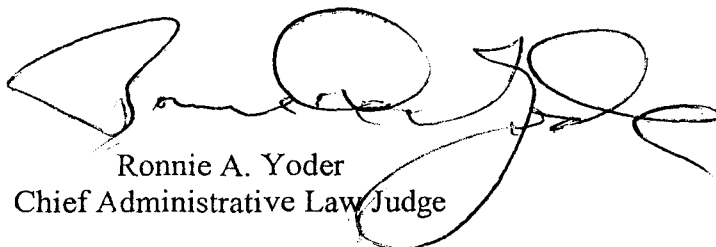
FAA DOCKET NO. CP05SO0049  
(Civil Penalty Action)

DMS NO. FAA-2005-22885

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**NOTICE OF ASSIGNMENT OF PROCEEDING**

This proceeding (heretofore designated as FAA Case No. 2005SO290003) has been assigned to the undersigned. All future pleadings and other communications regarding this proceeding shall be served on the Judge, the FAA Hearing Docket, and the other persons on the attached Service List.



Ronnie A. Yoder  
Chief Administrative Law Judge

Attachment - Service List

**SERVICE LIST**

**ORIGINAL & ONE COPY**

Hearing Docket  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591  
Attn: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building – Room 2014<sup>1</sup>

**ONE COPY**

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

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The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
Room 5411  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

TEL: (202) 366-2142  
FAX: (202) 366-7536

---

<sup>1</sup> Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building – Room 2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.

DEPT. OF TRANSPORTATION  
DOCKETS

2006 MAY 16 A 11:02

**SERVED: FEBRUARY 1, 2006**

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC

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IN THE MATTER OF

JOAQUIN RODRIGUEZ

FAA DOCKET NO. CP05SO0049  
(Civil Penalty Action)

DMS NO. FAA-2005-22885 -

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**ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE**

This proceeding arises from a complaint dated October 27, 2005, alleging violation of the Federal Aviation Act/Regulations, and the Respondent's request for hearing dated October 14, 2005. The undersigned administrative law judge was assigned to the proceeding by Notice served February 1, 2006.

The Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. §§ 13.201-13.235). Those rules provide, inter alia, that the Respondent must file a written answer or motion within 30 days after service of the complaint (§ 13.209(a)); that a general denial is deemed a failure to file an answer (§ 13.209(e)); that failure to file an answer without good cause is deemed an admission of each allegation in the complaint (§ 13.209(f)), and that a party seeking an extension of time must file a written motion at least

seven days before the document is due, absent agreement of the parties or good cause shown (§ 13.213(a) and (b)).

To expedite the hearing in this matter, the Regional Counsel and the Respondent, on or before March 3, 2006, shall file (1) any amendment of the complaint or answer;<sup>1</sup> (2) an agreed or separate proposed procedural schedules, including proposed dates (i.e., specific dates, not merely numbers or days before the hearing) for (a) filing stipulations, a list of witnesses, a summary of their proposed testimony, and for (b) exchanging exhibits and discovery, if any; (3) a statement concerning the status of settlement efforts; and (4) a proposed hearing site and, absent agreement of the parties, a justification of the proposed site. See 14 C.F.R. § 13.237.

Under FAA Order 2150.3A and the Rules governing these proceedings, the agency attorney and the Respondent should continue to consider the possibility of settlement and compromise of this matter.<sup>2</sup> In connection with such discussions, the FAA shall furnish Respondent a copy of at least the following pages of FAA Order 2150.3A (Change 30, dated November 15, 2001)--cover page and pages i, 15-24, 30, 138-1 and Appendix 4 pages 1-4 and any other relevant pages of the Sanction Guidance Table (including pages 5-8 for air carrier cases and pages 20-1 to 21-3 for weapons violations).

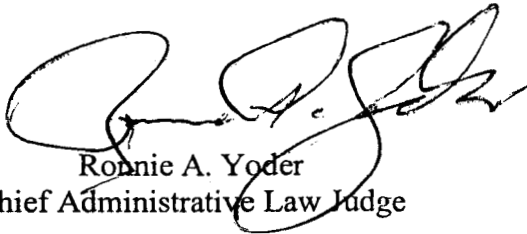
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<sup>1</sup> Further amendments are not anticipated absent good cause shown. Though 14 C.F.R. § 13.214(b)(1) permits amendments at any time more than 15 days before a hearing, utilization of that provision would prevent orderly preparation for a hearing and could prevent any hearing at all, because notice of a hearing must be given 60 days in advance. 14 C.F.R. § 13.221(a). An amendment that might be filed 15 days prior to the hearing would entitle the other party up to 20 days in which to reply (14 C.F.R. § 13.214(c)), and could generate a new round of schedules (14 C.F.R. § 13.217), motions (14 C.F.R. § 13.218), and discovery (14 C.F.R. § 13.220), necessitating a postponement of the hearing, a new 60-day notice, et cetera ad infinitum.

<sup>2</sup> See Linda Joyce Goodman, FAA Docket No. CP89WP0061, Order served May 30, 1989. See also Exec. Order No. 12,988, 61 Fed. Reg. 4729 (Feb. 5, 1996), which refers to facilitating the just and efficient resolution of civil claims involving the United States Government and which directs Federal agencies and their litigation counsel to, "as soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, . . . evaluate settlement possibilities and make reasonable efforts to settle the litigation."

Compromise may be effected with or without a finding of violation (§ 13.16(l)). Each party's filing shall include a telephone number where the party can be reached by the Judge for prehearing telephone conferences.

SO ORDERED.



Ronnie A. Yoder  
Chief Administrative Law Judge

Attachment - Service List

**SERVICE LIST**

**ORIGINAL & ONE COPY**

Hearing Docket  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591  
Attn: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building – Room 2014<sup>3</sup>

**ONE COPY**

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

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Office of the Regional Counsel  
Southern Region, ASO-7  
Federal Aviation Administration  
P.O. Box 20636  
Atlanta, GA 30320

TEL: (404) 305-5200  
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The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
Room 5411  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

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**U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC**

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
2005 JUL 18 A 11:02

FEDERAL AVIATION ADMINISTRATION,  
Complainant,

vs.

JOAQUIN RODRIGUEZ  
Respondent.

FAA Docket No. CP05SO0049  
FAA Case No. 2005SO290003  
DMS No. FAA-2005-22885

Judge Ronnie A. Yoder

**AGENCY'S MOTION TO DEEM ALLEGATIONS ADMITTED**

The Complainant, by and through the undersigned attorney, pursuant to Sections 13.218 of the Rules of Practice in FAA Civil Penalty Actions (14 C.F.R. §13.218) and the Order Of Chief Administrative Law Judge, served February 1, 2006, hereby moves the Administrative Law Judge to determine that the Allegations in the complaint have been admitted, and if a hearing is necessary in this matter, that the unscheduled hearing, if necessary at all, will only be for the purpose of determining the sanction involved in the matter. As grounds for this motion, Complainant states the following:

1.

In a letter dated October 14, 2005, sent in response to a Final Notice of Proposed Civil Penalty, Respondent requested a hearing in this matter. The return address on this



letter was, "Joaquin Rodriguez, 525 Boxwood Dr., Yaphank (sic), N.Y. 11967". *Exhibit 1.*

2.

On October 27 2005, Complainant filed the complaint in this matter with the Hearing Docket and served a copy on Respondent. *Exhibit 2.* Complainant sent the complaint to "Joaquin Rodriguez, 525 Boxwood Dr., N. Shirley, N.Y. 11967", Respondent's last known address and the same address to which the Final Notice was sent. North Shirley, N.Y. is another city on Long Island, New York in the same zip code. *Exhibit 3.*

3.

The complaint was returned to Complainant marked "moved, left no address, unable to forward, return to sender" on November 9, 2005. *Exhibit 4.* Since that time, Complainant has made several attempts to serve the complaint on Respondent.

4.

Most recently, on November 25, 2005, via certified mail, Complainant sent the Respondent a copy of the complaint at 525 Boxwood Dr., **Yaphank**, NY 11967. After several attempts at delivery, the U.S. Post Office returned the complaint and marked it "Unclaimed". *Exhibit 5.*

5.

Another copy of the complaint was sent to Respondent via regular 1<sup>st</sup> class U.S. Mail on December 27, 2005. *See, Exhibit 5.* This copy of the complaint has not been returned.

6.

Pursuant to 14 C.F.R. §13.211(g), the complaint was validly served on Respondent no later than December 27, 2005.<sup>1</sup>

7.

Pursuant to 14 C.F.R. §13.209(a) and §13.211(e) Respondent had 35 days (30 days plus 5 for mail service) to file an answer. The complaint itself explicitly reminded Respondent of this deadline. Under these rules, Respondent's answer was due approximately February 1, 2006.

8.

To date, Respondent has not filed an answer to the complaint.

9.

According to §13.209(f), a person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.

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<sup>1</sup> 14 C.F.R. §13.211(g) "*Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused."

See, FAA v. Budde W. Playter, FAA Docket No. CP89GL0257 (March 19, 1990)

("Although this is a severe penalty for failure to file an answer, the rule is clear and does not permit exceptions.").

10.

Complainant requests a ruling on this motion as soon as possible, to allow adequate preparation of a response to the honorable ALJ's February 1, 2006 order.

WHEREFORE, Complainant respectfully moves the Administrative Law Judge to deem as an admission of truth each allegation in the complaint, and if a hearing is still deemed necessary, that it should be only for the purpose of determining the amount of the sanction in this matter.

Respectfully submitted this 8<sup>th</sup> day of February, 2006.



GERALD A. ELLIS

Attorney

Office of the Regional Counsel

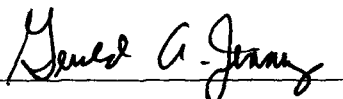
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion To Deem Allegations Admitted has been mailed via FEDERAL EXPRESS indicated below:

The Honorable Ronnie A. Yoder (original + 1 copy)  
Chief Administrative Law Judge  
Office of Hearings, M-20  
Room 5411  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

TEL: 202-366-2142  
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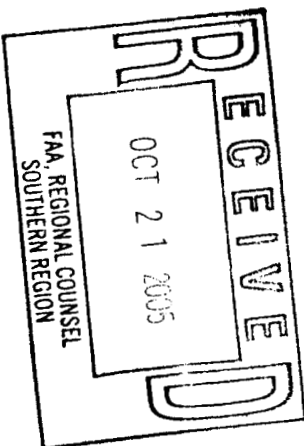
Joaquin Rodriguez (1 copy)  
525 Boxwood Dr.  
Yaphank, NY 11967



FEB 8 2008

Dated

Tommy Rodriguez  
525 Bowers Dr  
Yonkers NY 10467



MR. GERALD A. ELLIS  
SOUTHERN REGION OFFICE OF THE  
REGIONAL COUNSEL  
P.O. Box 20636  
ATLANTA-GEORGIA 30320





U.S. Department  
of Transportation

**Federal Aviation  
Administration**

OCT 27 2005

CERTIFIED - RETURN RECEIPT REQUESTED

Hearing Docket  
FAA, AGC-400, Room 2014  
600 Independence Avenue, SW  
Washington, DC 20591

Re: In the Matter of Joaquin Rodriguez  
FAA Case No. 2005SO290003

DEPT. OF TRANSPORTATION  
Southern Region  
Office of the Regional Counsel  
05 NOV 22 PM 3:20

P.O. Box 20636  
Atlanta, Georgia 30320

(404) 305-5200  
(404) 305-5223 FAX

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NOV - 1 2005

HEARING DOCKET

CP05SO 0049 | FAA 2005-22885

Enclosed herewith please find a copy of a request for hearing and the original and one copy of the Complaint in the above-referenced proceeding.

The FAA requests that the hearing in this matter be held in the Orlando, Florida area, and expects that the hearing will last one day.

Please address all communications for the FAA to the undersigned, at:

Federal Aviation Administration  
Office of the Regional Counsel, ASO-7  
Southern Region  
P.O. Box 20636  
Atlanta, Georgia 30320  
Telephone: (404) 305-5200, facsimile (404) 305-5223.

Sincerely,

GERALD A. ELLIS  
Attorney  
Office of the Regional Counsel

Enclosures

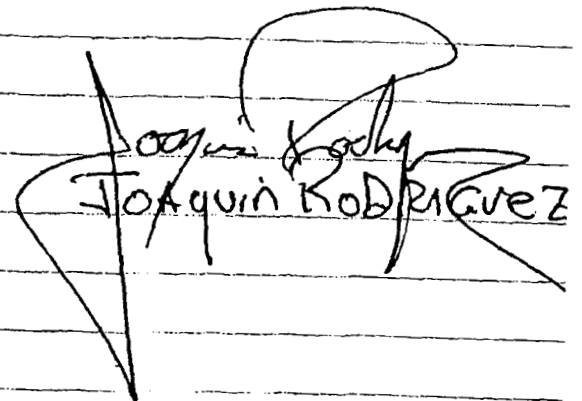


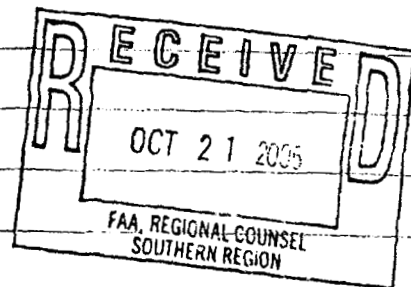
200550290003

DATED: 10-14-05

MR. GERALD A. ELLIS

I, JOAQUIN RODRIGUEZ, DID  
SUBMIT A REQUEST FOR A HEARING TO THE  
HEARING DOCKET IN WASHINGTON D.C. ON  
THE PROPOSED CIVIL PENALTY THAT THE FAA  
PROPOSED. THIS IS MY FIRST NOTICE AFTER  
SEVEN MONTH OF THIS INCIDENT. I WILL HAVE  
AN ATTORNEY PRESENT.

  
Joaquin Rodriguez



U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
FEDERAL AVIATION ADMINISTRATION

FEDERAL AVIATION ADMINISTRATION,  
Complainant,

vs.

Joaquin Rodriguez

Respondent.

FAA Docket No.  
Judge

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JUDGE NOT YET ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I.

On October 7, 2005, Respondent, Joaquin Rodriguez was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$7,300. On ~, the Agency Attorney received a written request for a hearing from the Respondent.

II.

1. On or about March 4, 2005, you were a passenger aboard Southwest Airlines Flight Number 147 ("Flight 147") from Islip, New York, to Orlando, Florida.
2. While Flight 147 was in flight, you threw an item at a flight attendant.
3. While Flight 147 was in flight, your behavior required you to be reseated by flight attendants.
4. While Flight 147 was in flight, you threatened to do bodily harm to a flight attendant, when the plane landed.



III.

1. By reason of the foregoing facts and circumstances, Respondent violated the following sections of the Federal Aviation Regulations and Federal Statutes:

a. Section 121.580 of the Federal Aviation Regulations, in that no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.


b. 49 U.S.C. Section 46318, which states that an individual who physically assaults or threatens to physically assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$25,000.

2. Pursuant to 49 U.S.C. Sections 46301(a)-(d), Respondent is subject to a civil penalty not to exceed \$1,100 for each of the FAR violations alleged.

3. Under the facts and circumstances of this case, a civil penalty of \$7,300 is appropriate.

WHEREFORE, the Agency, by counsel respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$7,300.

Respectfully submitted this 27<sup>th</sup> day of October, 2005.



GERALD A. ELLIS  
Attorney  
Office of the Regional Counsel

**PLEASE NOTE:**

Pursuant to Title 14 CFR Section 13.209(a), you are required to file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service which follows.

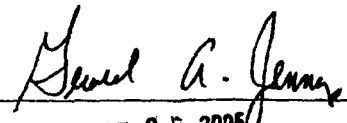
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Complaint has been mailed this date by Certified Mail, Return Receipt Requested, to the following:

Hearing Docket  
FAA, AGC-400, Room 2014  
600 Independence Avenue, SW  
Washington, DC 20591

(Original + 1 copy)

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

  
OCT 27 2005

Dated

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EAST YAPHANK, NY

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DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
SOUTHERN REGIONAL OFFICE  
ATLANTA, GEORGIA 30320

OFFICIAL BUSINESS

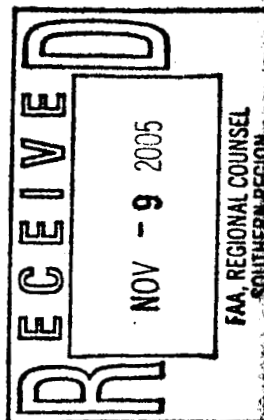
PENALTY FOR PRIVATE USE, \$300

150-7

FEDERAL AVIATION ADMINISTRATION  
DOT-515

Remained by Regular Mail  
11-10-05  
Ktd

Joaquin Rodriguez  
525 Boxwood Drive  
N. Shirley, NY 11967

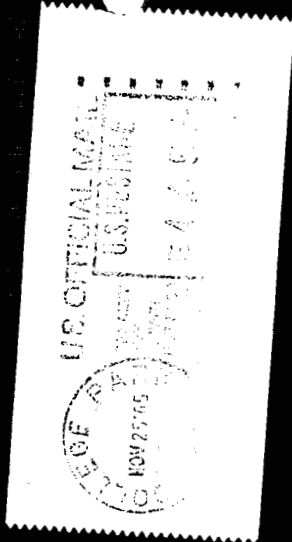


RODR525 119672052 1405 10 11/03/05  
RETURN TO SENDER  
RODRIGUEZ, JOAQUIN  
MOVED LEFT NO ADDRESS  
UNABLE TO FORWARD  
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GOVERNMENT  
EXHIBIT  
4



7004 1160 0000 9156 6792



**RTS**  
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☐ ATTEMPTED NOT KNOWN  
☐ NO SUCH NUMBER/STREET  
☐ OTHER  
☐ NOT DELIVERABLE AS ADDRESSED  
- UNABLE TO FORWARD

☐ A  
☐ C  
☐ S

**RETURNED TO SENDER**